CONSERVATION LAW FOUNDATION

CONSERVATION LAW FOUNDATION'S COMMENTS
TO THE COMMONWEALTH'S ADVANCED BIOFUELS TASK FORCE
DRAFT SUMMARY RECOMMENDATIONS

Conservation Law Foundation (CLF) appreciates the opportunity to offer comments on the Draft Summary Recommendations released by the Commonwealth's Advanced Biofuels Task Force (Task Force) on March 6, 2008. The Task Force has already done extraordinary work in a short time. Biofuels policies, technologies, and assessments are multiplying rapidly, and the draft recommendations have obviously considered many of the emerging issues.

The Task Force's focus on the development of a regional low carbon fuel standard is the great success of these draft recommendations. CLF commends the Task Force for taking the lead in moving the Northeast towards the sustainable development of alternative fuels that reduce greenhouse gas emissions. A low carbon fuel standard, properly designed and implemented, will lead to a steady, stable development of an alternative fuels economy in Massachusetts.

CLF offers the following comments to assist the Task Force in preparing its final report.

Chapter 1—The Potential Economic Opportunities of an Advanced Biofuel Sector in Massachusetts

Assessing the potential economic benefits and their sources provides an important beginning. These figures give insight into the areas where Massachusetts is most likely to add value to the advanced biofuels production chain, and they provide a starting point for further analysis of the Commonwealth's resources.

Continuing to refine this analysis in concert with the work being done on lifecycle and other environmental impacts is vital to properly calibrating the low carbon fuel standard to the variables of the region.

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Chapter 2—The Energy and Environmental Lifecycle of Advanced Biofuels

The importance of establishing standards for lifecycle evaluation cannot be overstated. Building a model that accurately assesses the environmental, economic and health impacts of all fuels is necessary to the successful operation of a low carbon fuel standard. However, the complexities and uncertainties surrounding this analysis should not prevent Massachusetts from working with others in the region now to design a standard.

As Massachusetts and other states in the region begin to evaluate the options for a regional low carbon fuel standard, California, the EPA and other parties will be refining their models. Massachusetts and its partners should be building relationships with those involved in designing the California and federal models, and should adopt the most stringent of these when they are complete.

Delays in the development of these models should not delay the low carbon fuel standard. California offers a model for moving forward without simply dismissing impacts that cannot be easily calculated. In its policy analysis California suggests building a "pessimistic" default lifecycle cost analysis dependent on a range of variables, for example, the type of feedstock, type of land use, type of transport, etc. A regulated party could either opt-in and use the default analysis or provide an independent lifecycle analysis. Assuming a high enough default is chosen, producers would have an incentive to choose the least intensive feedstocks and methods of production and transport.[1]

In the event that no other comprehensive model is available when Massachusetts is prepared to implement a regional low carbon fuel standard, it should review the available options and adopt the most scientifically reliable model.

Although CLF supports the Task Force's recommendation to link state support or funding to reductions in greenhouse gas emissions, it should recommend specific reductions. The Energy Independence and Security Act required 50 and 60 percent reductions from baseline levels.[2] Massachusetts should require no less from its state supported fuels.

CLF understands the motivation behind the recommendation to allow exemption from lifecycle analysis for waste materials, especially if they are limited to waste oils; however, public participation and a thorough review process would need to precede the exemption of any category of feedstock no matter how low its impacts are expected to be. Moreover, certain categories of waste (construction and demolition debris, electronics and other wastes that could release toxins) should be subject to higher scrutiny.

[1] Alex Farrell & Dan Sperling, A Low-Carbon Fuel Standard for California, Part 2: Policy Analysis 64-67 (August 2007).

[2] *See* H.R. 6 (2007) § 201(1) (reduction from baseline greenhouse gas emissions of 50% for advanced biofuels, 50% for biomass-based diesel, and 60% for cellulosic biofuels).

CLF strongly supports the development of fuel quality standards to maximize the performance of biofuels, provide assurances to customers and guarantee the accuracy of any incentive payments.[3]

Chapter 3—Biofuel Feedstocks –Energy Crops, Biomass and Waste Products

CLF concurs with the Task Force's conclusion that Massachusetts, and the Northeast, are much more likely to benefit from advanced biofuels produced from cellulosic feedstocks. CLF supports assessing the current state of agricultural and forest lands in Massachusetts, continuing the type of modeling and analysis that the Massachusetts Bioenergy Initiative has begun, and expanding research on the viability of locally grown cellulosic feedstock. These efforts will produce policies that promote sustainable agricultural and forestry practices (leading to an environmentally and economically vibrant agricultural landscape in Massachusetts that will be more resilient to the threat of sprawl). Again, we caution the Task Force to proceed carefully in its analysis of waste feedstocks. Any studies of or funding towards converting waste to fuel should undergo public comment and rigorous review. Only those wastes that can be most efficiently and safely converted to fuels or energy should be considered. Incentives to recycle should be maintained.

Chapter 4—Statutory and Regulatory Support for Biofuels

Again, CLF applauds the Task Force for focusing on the "near-term" implementation of a low carbon fuel standard. Massachusetts can lead the Northeast States in the shaping and implementation of a low carbon fuel standard that will be replicated across the nation. The low carbon fuel standard provides the most comprehensive approach to reducing greenhouse gas emissions from fuel. Rather than simply offering incentives to individuals fuels or companies piecemeal, the low carbon fuel standard provides all fuel producers, and every supplier in their production chain, with an incentive to reduce carbon. These incentives can be even further enhanced with the application of a credit or trading regime.

Unfortunately, the Task Force has maintained the goal of setting volumetric mandates. *See* lines 148-57. CLF recommends against that course of action. Mandates may have disastrous results, and they are often difficult to phase out once they have been adopted. The European Union's experience with its volumetric directives has been viewed widely as a cautionary tale of mandates gone awry.[4] Therefore, CLF strongly advises against setting mandates; however, if the Task Force does continue to call for mandates, any mandates should be subject to the following conditions:

[3] Chris Reddy, *Biodiesel: What's in your Tank?*, Environmental Science & Technology (February 27, 2008) This study found that "blends sold as 20% biodiesel contained as little as 10% or as much as 74% biodiesel."

[4] One study concluded that the increased biofuels demand resulted in, among other things, 33 million acres of land conversion in China, 90% of deforestation in Malaysia, and 2000 million metric tons of carbon dioxide released from Indonesian peat lands over the course of one year. Jonathan Lewis, Clean Air Task Force, Leaping Before they Looked 14, 17 (October 2007).

(1) Delayed Implementation. No blending requirement or mandate should be adopted until California and the EPA have chosen a model that accounts for indirect land use changes.
(2) Sunsets. A blending requirement or mandate should not be allowed unless it is accompanied by an explicit sunset tied to the implementation of a low carbon fuel standard.
(3) Greenhouse Gas Reductions. Any blending requirement or mandate must be tied to a specified, verified reduction in greenhouse gases either equivalent to or more stringent than the requirements set forth in the federal Energy Independence and Security Act (reduction from baseline greenhouse gas emissions of 50% for advanced biofuels, 50% for biomass-based diesel, and 60% for cellulosic biofuels). *See* H.R. 6, Section 201 (1).
(4) Fuel Standards. Before any blending requirement or mandate goes into effect, fuel standards must be adopted and any fuels used to satisfy the mandate must meet those standards.

Finally, some of the Task Force's recommendations with respect to biofuels produced from waste products are a cause for alarm. CLF is very concerned about the prospect of exempting waste from the requirements of a life-cycle analysis. CLF also expresses concern over language that could be interpreted to allow the MassDEP to exempt from permitting requirements pilot scale biorefineries that use waste as a feedstock. *See* Lines 159-68. This recommendation, which explicitly includes plastics, rubber, construction and demolition debris and electronic components among biofuel feedstocks, warrants close and thorough review, especially given Massachusetts' history with waste incinerators. The language suggesting streamlined permitting review of commercial demonstration of waste-to-energy is also troubling. *Id*. Waste products, especially those that have been shown to release toxins when used to generate electricity in other processes, should be subject to extremely close scrutiny.

Chapter 5—Infrastructure for Delivery and Distribution of Biofuels

CLF supports the infrastructure studies and analyses recommended by the Task Force. However, CLF recommends that these studies be conducted as part of a comprehensive survey of the Commonwealth's transportation infrastructure to ensure that other measures to reduce greenhouse gas emissions from the transportation sector are given equal consideration.

Chapter 6—Grants, Loans, and Tax Incentives

The Task Force has outlined a variety of opportunities for investments in infrastructure and biofuels production through grants, loans, and tax incentives. CLF could support an exemption for cellulosic biofuels from the state's gasoline tax if such an exemption were tied to a specified reduction in greenhouse gas emissions, such as the federal Renewable Fuel Standard referenced above.

CLF recommends that any grants, loans, incentives, or state investments in biofuels and supporting infrastructure be awarded as "continuous" incentives. That is, the level of the incentive should be based upon the level of greenhouse gas emissions reductions produced by the fuel. For example, a continuous standard rewards fuels with a 65 percent reduction more than a 50 percent reduction and rewards a 75 percent reduction even more.

CLF supports the recommendation to phase out all financial incentives for producers and consumers of biofuels upon the implementation of a Low Carbon Fuel Standard.

Conclusion

CLF supports the Task Force's recommendation to develop and implement a regional low carbon fuel standard. This should be the driving force behind Massachusetts' biofuel policy. The low carbon fuel standard provides the best framework for rewarding fuels that produce the most greenhouse gas reductions with the least impact on the environment. Much work still needs to be done to evaluate the lifecycle impacts of biofuels, and Massachusetts should not establish either a low carbon fuel standard or any other biofuels policy until it can assure that it is promoting actual reductions in greenhouse gas emissions. Therefore, Massachusetts should begin its work by convening the other New England states and coordinating with California policymakers to begin adapting the low carbon fuel standard to this region. The design of the policy can proceed while California, the EPA, and the regional stakeholders continue working to produce valid models. Upon the adoption of models by California and EPA, Massachusetts may implement its low carbon fuel standard.[5]

CLF again extends its thanks the Task Force for its efforts. We look forward to continued engagement in this stakeholder process to design the most effective policies for reducing greenhouse gas emissions from the transportation sector.

Respectfully submitted,

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